

Except as provided in 86 Ill. Adm. Code 130.2011 and 130.2012, lessors incur Use Tax even if the tangible personal property is leased to an exempt entity that has been issued an exemption identification number. See 86 Ill. Adm. Code 130.2011 and 130.2012. (This is a GIL.)

July 18, 2006

Dear Xxxxx:

This letter is in response to your letter dated August 23, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is registered to do business in the State of Illinois and would like to request an updated ruling from you regarding the sales tax requirements of our business in your state.

ABC is in the business of '**renting**' durable medical equipment to aid in the care of obese patients. We rent to various locations in the State of Illinois. Most of our rentals are to hospitals and nursing homes, with occasional rentals to individuals. Some of these entities will be exempted from sales tax by nature, however, some will not. In the event they are not, we must know what is a taxable product and what is not.

We would like a written opinion from your department, specifically on the items we rent, so that we do not misinterpret the State of Illinois rules. In addition, please send us a copy of your Sales Tax Rules and Regulations.

Please send us a written determination regarding the sales tax requirements on the rental of our equipment and the **delivery fees** thereon. Items we rent are as follows:

- Hospital Beds
- Wheelchairs
- Patient Lift Systems

- Continuous Air Flow Mattress
- Bed Trapeze
- Walkers
- Non-Powered Mattress Overlay
- Disposable items (one patient use)
- Shower/Commode Chair (on wheels as a wheelchair)
- Service Agreements

In addition, we have occasional '**sales**' of commode pails, lift slings, etc.

Another area of concern is where to tax the rental/sale. Many states are converting to a destination-based sales tax. Most of our rentals/sales are delivered to different locations throughout the state. Please address the issue of the taxing jurisdiction.

If possible, please fax the determination to me as soon as possible and mail a copy to:

ADDRESS

If you need to contact me, my number is #.

Thank you for your prompt response.

DEPARTMENT'S RESPONSE:

LEASES:

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax. A true lease generally has no buy-out provision at the close of the lease. If a buy-out provision does exist, it must be a fair market value buy-out option in order to maintain the character of the true lease.

In general, lessors (not being resellers) are deemed the end users of tangible personal property leased to others and are subject to the Use Tax when purchasing tangible personal property that they rent or lease to others. See Sections 150.201 and 150.305(e) of the Use Tax (86 Ill. Adm. Code 150) and 86 Ill. Adm. Code 130.220 of the Retailers' Occupation Tax Act.

Except as provided in 86 Ill. Adm. Code 130.2011 and 130.2012 (certain leases to exempt hospitals and governmental bodies), such lessors incur Use Tax even if the tangible personal property is leased to an exempt entity that has been issued an exemption identification number under 86 Ill. Adm. Code 130.2007. This would include all entities, other than for certain leases to exempt hospitals and exempt governmental bodies, even if they have a valid "E" number exemption identification. Under the Use Tax Act, the lessor, as end user, would incur Use Tax liability when renting or leasing equipment to not-for-profit organizations, even if they presented a valid exemption identification number. See 86 Ill. Code 130.2010(b).

Information regarding the low rate of tax applied to medical appliances may be located at 86 Ill. Adm. Code 130.310. In addition, you may find helpful information regarding the items listed in your request by viewing the Department's various "Sunshine Letter" rulings listed on the Department's Internet website under the heading of "Laws/Regs/Rulings." For example, see general information letters ST-05-0004-GIL, ST-02-0219-GIL and ST-01-0255-GIL.

SALES:

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b). The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred.

If a purchase order is accepted outside the State, but the property being sold is located in an inventory of the retailer which is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. If both the purchase order acceptance and the location of the property being purchased are outside of the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%.

Although the regulation cited above (86 Ill. Adm. Code 270.115) deals with the municipal home rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department. Information regarding the tax liabilities of delivery fees may be found at 86 Ill. Adm. Code 130.415. The Department makes its rules and regulations available for viewing on the Department's Internet website at the location listed below.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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